

part 6

Nancy Walker

From: do-not-reply@scc.virginia.gov
Sent: Tuesday, August 17, 2021 8:32 AM
To: BFI_Comments
Subject: Comment for BFI-2021-00007
Attachments: FSA Comment_BFI-2021-00007.pdf

Case Number BFI-2021-00007
First Name Rich
Last Name Cordray
Organization U.S. Dept. of Education, Office of Federal Student Aid
Address Line 1 830 First St. NE
Address Line 2
City Washington
State DC
Zip Code 20002
Phone Number 800-433-3243
Email Address bonnie.j.latreille@ed.gov
Comments Please see the attached submission from the U.S. Department of Education's Office of Federal Student Aid.

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August 16, 2021

Clerk of the Commission
State Corporation Commission
Document Control Center
P.O. Box 2118
Richmond, VA 23218

RE: Case No. BFI-2021-00007: Order Requesting Additional Comments

Dear Commissioners:

The Virginia State Corporation Commission seeks comment on whether the State's *Student Loan Borrower Bill of Rights* law may be federally preempted. Since the Commission began this proceeding, a major development has occurred that bears squarely on this issue. On August 12, 2021, the U.S. Department of Education (Department) published a Notice on *Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers* (2021 Preemption Notice).¹ In it, the Department concludes that "State [licensing] laws are preempted only in limited and discrete respects," and further explains how such laws help "facilitate close coordination between the Department and its State partners to further enhance both servicer accountability and borrower protections."² This Notice explicitly supersedes the Department's prior position on the preemption issue, both as a matter of law and as Department policy. I wanted to make sure the Commission's further consideration of the validity of Virginia's *Student Loan Borrower Bill of Rights* is undertaken in light of the principles set forth in the 2021 Preemption Notice issued by the Department.

The tenor of the Department's 2021 Preemption Notice is premised on partnership and cooperation between States and the Federal government to serve the best interests of the American people. While Federal law preempts State action on student loan servicing in certain narrow areas, a cooperative approach is necessary to the proper functioning of our most important markets, including the \$1.7 trillion student loan market. As several State attorneys general stated in a letter to the Department of Education, "[N]ow is the time for the Department to work with law enforcement and regulatory agencies at all levels of government to end fraudulent and abusive collection practices in connection with the servicing and collection of student loans, not to sideline state partners."³

¹ Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers, 86 Fed. Reg. 44277 (Aug. 12, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-08-12/pdf/2021-17021.pdf>.

² 2021 Preemption Notice, *supra* note 2, at 44277.

³ See Letter from 25 State Attorneys General to Education Secretary Betsy DeVos (Oct. 23, 2017), https://ag.ny.gov/sites/default/files/devos_letter.pdf; Governors Voice Concerns Over New Student

Close and harmonious coordination between Federal and State officials on student loan issues is critical in all states, including Virginia, where student loan borrowers have submitted more than 10,000 complaints about a range of issues including payment processing, credit furnishing, disability discharge, access to loan forgiveness programs, and more.⁴ Each complaint sheds light on the challenges borrowers face in navigating loan repayment and informs our collective effort to deliver upon the promise of Federal student aid. Federal-State cooperation, with a joint focus on analyzing and acting on student borrower concerns, will help us to work together to deliver on this promise.

Indeed, as the Federal student loan program approaches the unprecedented task of transitioning 41 million borrowers out of the current payment, interest, and collections pause, the Department's Office of Federal Student Aid (FSA) intends for States to serve as partners in helping FSA achieve better delivery of these programs. Many States with Borrower Bills of Rights are already working cooperatively with FSA to fix these breakdowns. For example, last year, as FSA's contractors worked to implement new borrower protections that Congress authorized during the pandemic, State regulators were able to use both their complaint tools and supervisory authority to identify where borrowers were not receiving the benefit of the available protections. Upon receiving this information, FSA was able work with its contractors to issue corrective actions and provide borrowers with the full scope of protections guaranteed by law. This agility and nimbleness make the States our indispensable partners—informing FSA's oversight efforts so that together, we can better identify and correct borrower harm.

The Department and FSA look forward to working collaboratively with Virginia, and all other States, to better serve and protect student loan borrowers.

Sincerely,



Richard Cordray
Chief Operating Officer
Federal Student Aid

Borrower Proposal, Nat'l Gov. Assoc. (Mar. 12, 2018), <https://www.nga.org/news/press-releases/governors-voice-concerns-over-new-student-borrower-proposal/>.

⁴ Virginia borrowers have submitted complaints to FSA (approximately 9,500 complaints submitted since 1999), the Consumer Financial Protection Bureau (approximately 1,000 complaints submitted since 2012), and the Virginia Qualified Education Loan Ombudsman (approximately 300 complaints submitted since 2018).